

Commerce Committee

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COMMERCE COMMITTEE

Forty-sixth Legislature
Second Regular Session

LEGISLATION ENACTED

department of commerce; continuation. (S.B. 1093) – Chapter 304

Retroactive to July 1, 2004, continues the Department of Commerce, except the Solar Energy Advisory Council and the State Energy Code Advisory Commission, until July 1, 2014.

veterinarians; crematory licensure; animals (S.B. 1104) – Chapter 215

Establishes regulatory authority over animal crematories under the Arizona State Veterinary Medical Examining Board (Board), specifying licensure requirements, grounds for refusal to issue or renew a license, and disciplinary action procedures. Authorizes the Board to establish and collect fees for animal crematory licensure and establishes grounds for disciplinary action, including the imposition of a civil penalty.

Makes other changes to the Board's statutes, including requiring a veterinarian to notify an animal's owner if burial is to be done in a landfill, expanding the list of acts for which the Board may place a veterinary technician on probation and establishing civil penalties regarding responsible veterinarian requirements and veterinary premise requirements.

registrar of contractors; continuation (S.B. 1106) – Chapter 16

Retroactive to July 1, 2004, continues the Registrar of Contractors until July 1, 2014.

board of barbers; continuation (S.B. 1107) – Chapter 17

Retroactive to July 1, 2004, continues the Board of Barbers until July 1, 2014.

real estate omnibus (S.B. 1140) – Chapter 100

Makes numerous changes to the statutes regulating the real estate industry. Establishes a voluntary license specializing in business brokerage, increases the civil penalty assessed on a developer who violates a timeshare law or rule and makes modifications to property management requirements.

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Establishes procedures and exceptions for reclaiming cemetery plots abandoned after 50 years. Defines “private cemetery.” Requires licensed cemeteries to set aside ten percent of abandoned plots within the cemetery for an heir to reclaim a plot after abandonment procedures occur and stipulates the procedures for heirs to reclaim the cemetery property or obtain equivalent property.

Additionally, establishes procedures for an out-of-state broker to cooperate with an Arizona broker, including the signing of a cooperation agreement that includes a listing of real estate activities, a compliance statement and a responsibility statement. Requires negotiations in this state or with people owning property in this state to be conducted by a broker licensed in Arizona and assigns responsibility for the acts of the out-of-state broker to the licensed Arizona broker. The out-of-state broker is prohibited from using a cooperation agreement to sell, lease, rent or exchange real property to a resident of this state and from listing, marketing or advertising in Arizona any real property located within this state.

cosmetology; aesthetics; nail technology (NOW: cosmetology; mobile salons) (S.B. 1159) – Chapter 102

Amends the definition of “salon” to include a retrofitted mobile vehicle exclusively used for the purpose of engaging in the practices of cosmetology, aesthetics or nail technology that is operated and dispatched from a business that has a physical street address. Exempts an individual from being licensed by the Board of Cosmetology if the individual provides services resulting in tension on hair strands or roots by twisting, wrapping, weaving, extending, locking or braiding hair if the services do not include preparations to alter the color or structure of the hair.

board of cosmetology; continuation (S.B. 1163) – Chapter 42

Retroactive to July 1, 2004, continues the Board of Cosmetology until July 1, 2014.

manufactured housing board; duties (S.B. 1172) – Chapter 43

Requires the Board of Manufactured Housing to establish permanent foundation standards for manufactured homes, mobile homes or factory-built buildings.

occupational therapy (S.B. 1204) – Chapter 130

Codifies current practice by including references to “occupational therapy” or “athletic training” in statutes regulating insurance claims, medical care and treatment, prescriptions and massage therapy.

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housing task force report; submission (S.B. 1215) – Chapter 19

Extends the deadline, from August 31, 2004 to December 31, 2004, for the final report of the Housing Commission Task Force on Tax Exempt Mortgage Financing.

landlord registration; tenant notice (S.B. 1234) – Chapter 183

Requires a tenant who chooses to terminate tenancy to provide to the tenant's landlord a written ten-day notice requesting that the landlord comply with residential rental property information requirements if the landlord is not in compliance with the requirements. Allows the tenant to terminate the rental agreement if the landlord fails to comply with the reporting requirements within ten days of receiving the notice from the tenant and requires the landlord to return the appropriate amount of security deposits and all prepaid rent to the tenant within ten days of the termination of the lease. Specifies the landlord is in compliance if the landlord had filed the required information with the county assessor. Applies the procedure to any existing or future lease agreements.

Arizona aerospace and defense commission (S.B. 1249) – Chapter 133

Establishes the 15-member Arizona Aerospace and Defense Commission (Aerospace Commission), in place of the Arizona Space Commission, to coordinate all of Arizona's aerospace and defense related commercial partnerships and to develop a strategic plan to build synergy between government, Arizona's aerospace and defense industries, and education. Beginning in 2005, requires the Aerospace Commission to submit an annual report by December 31 detailing its findings. Terminates the Aerospace Commission on July 1, 2011.

~~securing workers' compensation; deposits~~ (NOW: workers' compensation; insurance carriers) (S.B. 1256) – Chapter 307

Makes various changes to workers' compensation insurance requirements.

The measure prohibits the Director of the Department of Insurance (DOI) from issuing a certificate of authority to transact workers' compensation insurance to an insurance carrier until the carrier deposits with the State Treasurer the required cash or securities and requires the insurance carrier to maintain the deposit at all times. The measure also requires the State Compensation Fund (SCF) to deposit the required cash or securities before transacting workers' compensation insurance and to maintain the deposit with the State Treasurer. Other changes are made regarding the deposit formula including changes to the time frames for when financial information required for the formula is due.

The measure also makes changes to the reimbursement procedures of the Special Fund and the SCF for the failure of an insurance carrier or employer to pay workers' compensation claims. Among the changes, the SCF is required to process workers' compensation claims and pay the amount due on behalf of and under the direction of the Special Fund. The Special Fund

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is then required to reimburse the SCF at least quarterly for the amount paid, together with reasonable administrative costs, necessary expenses and reasonable attorney fees. Additionally, the Industrial Commission, Special Fund and the SCF are required to develop and implement a transition process, the requirements for which are specified, for the changes in the reimbursement procedures.

Additionally, DOI is required to continue its practices regarding approved reinsurance as they existed on December 31, 2003 until further legislation is enacted regarding approved reinsurance.

purchaser of dwelling actions (S.B. 1311) – Chapter 216

Prohibits a purchaser from filing a multiunit dwelling action without first complying with alternative dispute resolution procedures and requires a seller's insurance company to treat any notice of alleged damages from a purchaser as a claim under the insurance policy if the policy covers the seller's liability arising out of the design, construction or sale of the property that is the subject of the notice.

cigarettes; delivery sales (S.B. 1353) – Chapter 311

Establishes requirements for tobacco product delivery sales, including age verification, disclosure, shipping, registration, reporting and tax collection requirements. States a tobacco product delivery sale is an order placed by voice transmission, mail, a delivery service, the Internet or other online service, or where the products are delivered by mail or delivery service. Defines "tobacco products" as all tobacco luxuries included in the luxury privilege tax except pipe tobacco and cigars.

The measure also exempts tribes and tribal members from the requirements of tobacco products delivery sales under specified circumstances and permits the Attorney General or a federal permit holder to bring an action in court to prevent violations.

Determines penalties for noncompliance with the requirements of tobacco products delivery sales. A violation by an adult is a class 5 felony and related fines are specified. A violation by a minor is a petty offense. A person who fails to pay taxes on a delivery sale must pay a penalty of five times the retail value of the tobacco products involved in addition to any other penalty.

~~state fire marshal~~ (NOW: regulatory reform; amendments) (H.B. 2009) – Chapter 288

Applies the notice requirements and requests for hearings of an appealable agency action to contested cases. Modifies burden of proof statutes for administrative hearings. Establishes the Regulatory Reform and Enforcement Study Committee (Committee) for the purpose of conducting hearings pertaining to regulatory laws and practices. Requires the Committee to

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submit an annual report on or before December 15, detailing its findings and recommendations.
Repeals the Committee on February 1, 2009.
board of appraisal (H.B. 2043) – Chapter 89

Makes numerous changes to the statutes governing the State Board of Appraisal (SBA) and to the requirements of the SBA's licensees to comply with federal regulations and the Uniform Standards of Professional Appraisal Practice, including modifying the classifications for certified or licensed appraisers, changing the requirements to obtain a nonresident temporary license or certification and expanding the requirements of licensees relating to work files.

board of appraisal; compensation; fees (H.B. 2044) – Chapter 48

A Proposition 108 measure that increases registration fees for property tax agents and extends the time period, from one year to two years, for which a registration is valid. Increases the maximum daily compensation for members of the State Board of Appraisal.

motor vehicle warranties; tax refunds (H.B. 2086) – Chapter 242

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ADOSH; duties (H.B. 2125) – Chapter 66

Clarifies that special inspectors who are certified by the Industrial Commission's Arizona Division of Occupational Safety and Health are authorized to perform inspections on boilers and lined hot water storage heaters. Exempts the Industrial Commission from review by the Governor's Regulatory Review Council when incorporating by reference the Federal Occupational Safety and Health Administration's standards relating to the recording and reporting of occupational injuries and illnesses as published in the Code of Federal Regulations.

power entities; confidentiality (H.B. 2132) – Chapter 110

An emergency measure allowing public power entities to release customer-specific information without specific prior written customer authorization if the information is reasonably required for legitimate account collection or credit analysis activities, or aids in providing safe and reliable service to the customer.

corporation commission; business entities (H.B. 2176) – Chapter 113

Makes numerous changes to the requirements of domestic and foreign limited liability companies (LLC). Specifically, states the Arizona Corporation Commission's (ACC) service for expedited corporate and LLC filings is a priority service to be completed as soon as possible after the documents are delivered to the ACC, instead of the same day they are received. Sets the

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fee for expedited corporate and LLC filings at \$35. Allows the ACC to charge LLCs specified fees currently charged to corporations and establishes a \$5 fee for filing a statement of change of address for a manager or member of an LLC.

Additionally, requires an LLC to maintain a “known place of business” instead of a “registered office” and states a known place of business may be the address of the statutory agent. Allows the ACC to administratively dissolve an LLC if the LLC fails to pay any required fees or penalties within 60 days of delinquency and requires a foreign LLC to adopt and use a fictitious name under specified circumstances. Allows an LLC to elect professional LLC status by amending its articles of organization.

right of attorney; technical correction (NOW: liquor licenses; definition; act of violence) (H.B. 2213) – Chapter 220

Stipulates an “act of violence” does not include the use of a nonlethal device by a peace officer. States the purpose of the amendment is to clarify existing administrative authority and it is not intended to be a substantive change.

UCC; bulk sales; repeal. (H.B. 2221) – Chapter 27

Repeals the bulk sales statutes within the Uniform Commercial Code.

charitable gift annuities; disclosures (H.B. 2228) – Chapter 30

Establishes requirements for a charitable organization entering into an agreement for a charitable gift annuity (CGA), including having been in continuous operation for at least three years, having a minimum of \$300,000 in unrestricted assets and having had an annual audit of its operations for the prior two fiscal years conducted by an independent certified public accountant. Stipulates the information a charitable organization must disclose to a prospective donor, including that a CGA is not insurance and is not regulated or protected by this state. Prohibits a person in connection with the solicitation or negotiation of a CGA from paying or accepting compensation that is contingent on the donation or amount of the CGA. Allows a donor to bring an action in court to recover losses incurred due to a CGA agreement in violation of these requirements.

consumer reporting agency; information disclosure (H.B. 2233) – Chapter 31

Prohibits a consumer reporting agency (agency) from providing or selling information that was submitted to the agency in an inquiry about a consumer’s credit information or a request for a credit report or insurance score, including information pertaining to the expiration, terms and conditions of an existing insurance policy. An agency may supply this information to the insurance producer that initially provided the information, the insurer on whose behalf the producer acted, or the insurer’s affiliates or holding companies. Provides that an insurer is not restricted from obtaining claims history or motor vehicle reports.

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annuities; standard nonforfeiture law (H.B. 2239) – Chapter 119

Changes the minimum nonforfeiture interest rate for individual deferred annuity contracts from one and one-half percent to the lesser of three percent or the five-year constant maturity treasury rate reduced by 125 basis points, but not less than one percent.

Makes numerous other changes to annuity contracts, including increasing, from \$30 to \$50, the annual contract fee for an individual deferred annuity and allowing a contract that provides substantive participation in an equity indexed benefit to increase the reduction of the interest rate by an additional 100 basis points to reflect the value of the equity index benefit.

Allows insurers to apply the changes made to future annuity contracts until the second anniversary of the general effective date, at which time the changes made become effective to all annuity contracts.

state banking department; continuation (H.B. 2240) – Chapter 33

Retroactive to July 1, 2004, continues the State Banking Department until July 1, 2014.

department of financial institutions (H.B. 2241) – Chapter 188

Effective January 1, 2006, changes the name of the State Banking Department to the Department of Financial Institutions (DFI). Expands the qualifications of the Superintendent of DFI to include experience within financial institutions.

contractors; recovery fund; registrar; license (H.B. 2301) – Chapter 248

Allows the Registrar of Contractors (ROC) to develop, manage, operate and sponsor construction-related programs designed to benefit the public in conjunction with other private and public entities and allows the ROC to accept voluntary donations from public agencies or enterprises to conduct construction-related programs.

Prohibits actual damages for reimbursement from the Residential Contractor's Recovery Fund from being established by bids supplied by an unlicensed person or entity or established by the value of work performed by an unlicensed person or entity. States examination scores for ROC applicants are valid for a two-year period.

landlord tenant; domestic violence (H.B. 2317) – Chapter 222

Prohibits rental agreements from limiting a tenant's right to summon a peace officer or other emergency assistance in response to domestic violence.

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building and fire safety; exemption (NOW: exemption; building and fire safety) H.B. 2373 – Chapter 35

Exempts a licensed real estate broker or salesman who sells used manufactured homes, mobile homes, factory-built buildings or subassemblies from additional licensure with the Office of Manufactured Housing if the structure is listed in a contract for transfer of an interest in real property executed by its owner and is installed on the real property. Defines “used” as a manufactured home, mobile home, factory built building or subassembly that has been occupied for at least 30 consecutive days for its intended use by a bona fide homeowner, renter or other end user.

workers’ compensation; infectious exposures (NOW: structural pest control commission) (H.B. 2399) – Chapter 208

Requires licensees of the Structural Pest Control Commission (Commission) to file a complete and accurate termite action registration form (TARF) and pay a fee prescribed by the Commission within 30 calendar days after completion of a termite treatment. Stipulates the treatments for which a TARF must be filed. Allows records of treatments, other than any record of a termite treatment, wood-destroying insect inspection report or fungi inspection report, to be maintained for at least three years instead of five years.

workers’ compensation; prescription medicine fees (H.B. 2438) – Chapter 165

Requires the Industrial Commission (IC) to create a schedule of fees for prescription medicines required to treat an injured employee. Requires the schedule of fees to comply with regulations regarding the substitution of generic equivalent drugs if the schedule of fees includes provisions regarding the use of these drugs. Stipulates requirements if the IC considers the adoption of a fee schedule that includes specific prices, values or reimbursements for prescription drugs.

vehicle license tax exemptions; veterans (NOW:unemployment insurance benefits) (H.B. 2440) – Chapter 251

Beginning July 1, 2004, increases the maximum weekly unemployment insurance (UI) benefit amount from \$205 to \$240.

The measure makes changes to the eligibility requirements for UI benefits including prohibiting, effective January 1, 2005, an individual from being deemed “unemployed” if the loss of full-time work is directly attributable to the fault of the individual or if the individual is receiving wages in lieu of notice, dismissal pay or severance pay (severance pay). A process to determine the period of time for which the severance pay may be allocated is specified and stipulates that the allocation process does not apply to severance pay paid to an individual in

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accordance with an employment contract entered into before January 1, 2005. The measure also requires an individual to earn a minimum of \$1,500, an increase from \$1,000, in paid wages for insured work in one calendar quarter of the individual's base period and prohibits UI benefits from being reduced due to the receipt of social security retirement.

Other major provisions of the bill include changes to employer contribution rates. Effective January 1, 2005, it exempts the payment of contributions or job training employer taxes if the quarterly amount of the contributions and taxes is less than \$10. Also effective January 1, 2005, the standard contribution rate is reduced from 2.7 percent to 2 percent for employers that do not have an established reserve ratio. An employer's contribution rate is also reduced from 0.05 percent to 0.02 percent if the employer's positive reserve ratio is 13 percent or more.

Additionally, the measure requires an employer to submit all required contribution and wage reports to the Department of Economic Security within 45 days of the appeals board finding the employer liable during an appeal of a reconsidered determination, instead of submitting them before the appeals process begins. Makes numerous other changes to the UI program.

industrial commission; general powers (H.B. 2441) – Chapter 96

Allows the Industrial Commission (IC) to exchange nonpublic, confidential or privileged information with another state, local or federal regulatory agency for the administration of programs if both agencies agree to maintain the confidentiality of the privileged information. The IC may enter into agreements that govern the exchange of the nonpublic, confidential or privileged information and request nondisclosure of this information. Allows the IC to protect from public inspection confidential financial information that is received from a private entity that applies to self-insure or that renews its self-insurance plan.

board of funeral directors; continuation (H.B. 2529) – Chapter 37

Retroactive to July 1, 2004, continues the State Board of Funeral Directors and Embalmers until July 1, 2014.

licensed liquor premises; closing time (H.B. 2570) – Chapter 77

Extends the time, from 1:00 a.m. to 2:00 a.m., that an on-sale or off-sale retailer is allowed to sell, dispose of, deliver or give spirituous liquor to an individual and from 1:15 a.m. to 2:30 a.m. that an on-sale retailer may allow an individual to consume or possess spirituous liquor on the retailer's premises.

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VETOES

fuel supplies; reporting (NOW: reporting; fuel supplies) (H.B. 2615) – VETOED

Establishes a process for producers, pipeline transporters and sellers of petroleum-based motor fuels in Arizona to daily report required information regarding motor fuel supplies to the Department of Weights and Measures (DWM) during a Governor-declared supply interruption. The measure requires the DWM to make the supply information available to the Director of the Department of Commerce and to make the information available in an aggregate format to the Attorney General, Director of the Department of Environmental Quality, President of the Senate, Speaker of the House of Representatives and a working group appointed by the Governor.

Additionally, the measure requires the supply information to be kept confidential and states it is not a public record. It also states an individual who knowingly releases the confidential supply information is guilty of a class 1 misdemeanor. The measure creates a process for disclosure of the supply information if it is requested and authorized by court order.

In her veto message, the Governor expresses concerns with restrictions on the state's ability to use the required supply information and that the bill makes it a misdemeanor for state officials to release information to the public during a crisis.